SUPREME COURT, U. S.

JUN 13 1969

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 238

ILENE M. BRADESKU,

Plaintiff-Appellee,

vs.

CLINTON D. BRADESKU,

Defendant-Appellant.

APPEAL FROM
THE SUPREME COURT OF THE STATE OF OHIO.

JURISDICTIONAL STATEMENT.

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APPEAL FROM
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JURISDICTIONAL STATEMENT.

OFFICIAL AND UNOFFICIAL REPORTS.

The subject of this appeal arises out of a trial which was commenced on April 18, 1966, in the Court of Common Pleas for Cuyahoga County, Ohio. The trial court on the 14th day of March, 1967, approved a Journal Entry embodying its finding and order therein. (Exhibit I.) Defendant's Motion, without finding or opinion, was overruled on the 28th day of April, 1967.

Thereafter, defendant appealed said lower court's order to the Eighth Appellate District of the State of Ohio. (Defendant's Assignment of Errors marked as Exhibit II.) The appellate court on May 23, 1968, published its findings in the *Daily Legal News* and *Cleveland Recorder.* (Exhibit III herein.) Its Journal Entry and Order was journalized on the 4th day of October, 1968. (Exhibit IV.)

Thereafter, defendant, on the 21st day of October, 1968, caused a motion, brief and questions of law to be filed with the Supreme Court of Ohio, Cause Number 68-627, requesting that said matter be certified. Questions of

law presented in the Court are Exhibit V. On the 12th day of March, 1969, said motion, without opinion, was overruled.

CLAIMED JURISDICTION OF THE UNITED STATES SUPREME COURT.

That appellant was denied due process of law under the 14th Amendment to the Constitution of the United States and Article I, Section 16 of the Constitution of the State of Ohio (Exhibit VI), as a result of the trial court, during trial, permitting six (6) continuances over a six (6) month period.

CASES BELIEVED TO SUSTAIN JURISDICTION.

Armstrong vs. Manzo, 380 U.S. 545.
Ballard vs. Hunter, 204 U.S. 24;
Brown vs. New Jersey, 175 U.S. 172;
Dohany vs. Rogers, 281 U.S. 362;
Dursa vs. Dursa, 78 O.L.A., 498;
Fisher vs. Fisher, 8 Ohio App. (2nd), 105;
Holt vs. Virginia, 381 U.S. 131;
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New England Div. Case (Akron C. & Y. Rr. Co. vs. United States, 261 U.S. 184);
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Superior Metal Products, Inc., vs. Modern Motor Express, 6 Ohio App. 2nd 1;
Washington ex rel. Oregon R. & Nav. vs. Fairchild, 224 U.S. 510;
Western Life vs. Rupp, 235 U.S. 261;

QUESTIONS PRESENTED BY APPEAL.

1. Is a litigant denied due process of law during the trial of his cause, when the trial court permits the case to be continued six times over a six month period?

2. Was defendant under a duty, during the trial of his cause, to object for the record to the continuances in order to preserve his claimed error that he was denied due process of law thereby?

STATEMENT OF THE CASE.

For the purposes of brevity, plaintiff-appellee, Ilene M. Bradesku, will be referred to as plaintiff and Clinton D. Bradesku, defendant-appellant, will be referred to as defendant.

On the 2nd day of October, 1963, plaintiff caused a petition to be filed in the Common Pleas Court in and for the County of Cuyahoga and State of Ohio, requesting, principally, a divorce, custody of the minor children, alimony, child support and other relief.

Thereafter and until the time of the first day of trial, to-wit: April 18, 1966, numerous pleadings and ancillary proceedings were had.

On April 18, 1966, the trial court heard this matter for the entire day. Thereafter, this matter was heard, partially, on May 9, 1966, the afternoon of May 18, 1966, the afternoon of June 8, 1966, the afternoon of June 29, 1966, the afternoon of June 30, 1966, the afternoon of October 6, 1966, and on October 10, 1966, when said matter was concluded.

The trial court on the 28th day of April, 1967, caused a Journal Entry to be filed in which its order was embodied therein.

Defendant's motion for a new trial was overruled on the 28th day of April, 1967, and an appeal, in law, was made to the Eighth Appellate District of Ohio seeking reversal on various assignments of error.

The Eighth Appellate District Court in and for the County of Cuyahoga and State of Ohio, found, firstly, that counsel, by their conduct, contributed to the extended length of the trial, and, secondly, counsel for defendant interposed no objection to the several continuances to future dates.

Thereafter, to-wit: On the 21st day of October, 1968, defendant filed a motion with the Supreme Court of Ohio, requesting that this cause be certified and heard on the merits. As in the Appellate Court, plaintiff filed no objection nor engaged counsel.

The Supreme Court of Ohio, on the 12th day of March, 1969, without opinion, overruled defendant's motion to certify said cause. Assignments of error set forth in that cause are enclosed.

On April 28, 1969, notice of appeal, to the Supreme Court of the United States, was filed with the Supreme Court of Ohio.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

Appellant's premise in presenting the Federal questions is two-fold. Firstly, that he was not afforded due process of law in the hearing of this cause in the trial court. Secondly, to preserve his contention that he was denied due process, was appellant under a duty during the trial of this cause to object for the record to the six (6) continuances?

Under his first premise, appellant contends that under the 14th Amendment to the Constitution of the United States of America, he had a guaranteed right to be heard

and to defend in an orderly proceeding. That the hearing must be one where he can effectively be heard.

Appellant further contends that he was denied due process of law during the trial of this cause in the trial court by reason of six (6) continuances, when he was obliged to have at each hearing his witnesses and other evidence which he could offer into evidence at the proper chronologic juncture of the trial. The continuances of the trial to sporadic dates tended to and did cause his witnesses to be uncooperative and hesitant, thereby depriving him of the right to conduct an effective defense and denying him due process of law thereby.

Appellant further contends that the six (6) continuances which caused this case to extend over a six (6) month period, caused him to sustain an undue economic loss in that it required him to suffer, unnecessarily, a loss of wages from his employment and incur greater litigation costs than that which a continuous trial would have generated.

Under appellant's first premise, it is respectfully submitted that the trial court in permitting the several continuances, denied and deprived him of a valuable property right, namely the right to a meaningful and effective hearing.

Under appellant's second premise, the attention of the court is respectfully directed to the finding of the appellant court of Ohio in sustaining the trial court. (Exhibit III.) That the appellate court found, as one of its findings, that "counsel for defendant-appellant interposed no objection on the record to the several continuances."

We submit that the guarantees granted under the Constitution of the United States to its citizens cannot be equated with the rules of procedure and evidence which vary from jurisdiction to jurisdiction. For these rights

are rights which transcend and have survived both the common and statutory law of practice and appellate procedure and the requirement of affirmatively objecting for the record of an abridgment thereof, dilutes the rights and privileges born out of our Constitution.

CONCLUSION.

Appellant admits and it is of public knowledge as well, that most jurisdictions are plagued with a substantial backlog of both criminal and civil cases awaiting trial; that one must await their turn to have their day in Court. Appellant says however that after waiting his turn, his case once called, should be tried continuously to its final conclusion.

The principle involved in this appeal is far reaching and should be heard on the merits. For at issue herein is whether a fair, effective and orderly hearing was afforded appellant when his case was heard in seven (7) installments over a six (6) month period.

Appellant says, in conclusion, that the rights and privileges flowing from the Constitution are not subject to statutory or case law of a state; and any procedural requirement, requiring a litigant to voice an objection during trial to save his constitutional rights is unconstitutional. It is, therefore, respectfully requested that this matter be heard on the merits.

Respectfully submitted,

A. ALBERT PERELMAN,
Attorney for Defendant-Appellant.

APPENDIX.

EXHIBIT I.

Journal Entry of the Court of Common Pleas.

This cause came on for hearing this 28th day of April, 1967, and was duly heard before the Honorable John E. Sweeney upon the petition of the plaintiff, the answer of the defendant, Clinton D. Bradesku and the evidence, both parties being in court and represented by counsel.

Upon due consideration thereof, the court finds that the plaintiff was a resident of the State of Ohio for more than one year and a bona fide resident of Cuyahoga County for more than ninety days, both immediately preceding the filing of the petition; that the parties were married as alleged, and that four children were born as issue of said marriage, one child having died in infancy, and the following, Larry, age 19 years, Darlene, age 16 years and Lance, age 7 years.

The Court finds that the defendant has been guilty of extreme cruelty and that by reason thereof the plaintiff is entitled to a divorce as prayed for.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff be and she is hereby granted a divorce from the defendant, and that the marriage contract heretofore existing between the parties be and is hereby dissolved and set aside.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the care, custody and control of the said minor children be and is hereby awarded to the plaintiff until further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant pay to the plaintiff as and for alimony the

sum of Twenty-Five ($25.00) Dollars per week if and when said defendant is engaged as an electrician within three (3) years from date hereof, and if so, said award shall prevail for a period of seven (7) years or until said plaintiff remarries, at which time same shall cease.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff be and she is hereby awarded defendant's interest in and to the following described real estate as alimony:

> Situated in the City of Maple Heights, County of Cuyahoga and State of Ohio, and known as being Sub Lot Nos. 284 and 285 in The Alpha Company's Orchard Villas Allotment of part of Original Bedford Township Lot No. 21 as shown by the recorded plat in Volume 92 of Maps, page 37 of Cuyahoga County Records, together forming a parcel of land 80 feet front on the Northerly side of Tabor Avenue and extending back of equal width 127 feet, as appears by said plat, be the same more or less, but subject to all legal highways,

said defendant to pay any and all existing liens thereon and to save the plaintiff harmless thereby, and said defendant is to pay all general taxes and special assessments thereon as they become due and save plaintiff harmless thereby, including any and all taxes and assessments now in arrears.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all household furniture, goods and effects now located in and about the home of the plaintiff be and shall remain the sole property of the plaintiff free from any claim by defendant, and any liens thereon shall be paid by defendant and plaintiff saved harmless thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant pay to the plaintiff as additional alimony

and expenses for her counsel fees the sum of Six Hundred Fifty and no/100 ($650.00) Dollars for which judgment is rendered and execution may issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that until further order of court, the defendant pay to the plaintiff for the support of the minor children, Darlene and Lance, the sum of Twenty ($20.00) Dollars per week for each child, plus medical and dental care, plus poundage, through the office of the County Clerk.

The Court further finds that the defendant is in the arrears in the payment of temporary alimony for plaintiff and support for the said minor children of the parties in the sum of Three Thousand Eight Hundred Ninety ($3,890.00) Dollars all until the date of this decree; It is therefore ordered, adjudged and decreed that the defendant pay said sum to the plaintiff for which judgment is rendered and execution may issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant execute and deliver a deed in favor of the plaintiff to the above described real estate and upon his failure so to do within five (5) days of the signing hereof, this decree shall operate as a conveyance thereof and the Clerk is directed to certify so much as is necessary of this decree to effectuate such conveyance to the Auditor and Recorder of Cuyahoga County, Ohio.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant pay the costs of these proceedings for which judgment is rendered and execution may issue.

Exceptions to plaintiff and defendant.

EXHIBIT II.

Assignments of Error in the Ohio Appellate Court.

1. That the trial court in permitting the trial to be adjourned six (6) times over a six (6) month period denied defendant-appellant due process of law.

2. That the trial court committed prejudicial error in denying and depriving defendant-appellant a speedy and uninterrupted trial.

3. That the trial court abused its discretion in granting adjournments for lengthy and unreasonable periods.

4. That the trial court committed prejudicial error in permitting plaintiff's counsel to make commentary during the course of the trial.

5. That the finding and decree of the court is manifestly against the great weight of the evidence and is contrary to law.

6. For other prejudicial error apparent in the record.

EXHIBIT III.

Finding of the Ohio Appellate Court.

28575—C.P.—Bradesku vs. Bradesku.

Judgment affirmed. Upon a careful reading of the record we conclude that the deft. appellant was not denied due process by reason of the untimely number of continuances had between the beginning and the end of the trial, for it appears therefrom that counsel for both parties by their conduct unnecessarily contributed to the extended length of the trial and counsel for deft. appellant interposed no objection on the record to the several continuances to future dates. Exceptions. Order see journal.

EXHIBIT IV.

Journal Entry of the Court of Appeals, Eighth Judicial District, Cuyahoga County, Ohio.

Date October 4, 1968:

This cause came on to be heard on the appeal on questions of law from the judgment of the Cuyahoga County, Common Pleas Court and was argued by counsel for the defendant-appellant; and upon consideration, the court finds no error prejudicial to the appellant and therefore the judgment of the Cuyahoga County, Common Pleas Court is affirmed. Upon a careful reading of the record we conclude that the defendant-appellant was not denied due process by reason of the untimely number of continuances had between the beginning and the end of the trial, for it appears therefrom that counsel for both parties by their conduct unnecessarily contributed to the extended length of the trial and counsel for defendant-appellant interposed no objection on the record to the several continuances to future dates, and IT IS ORDERED that appellee recover of appellant her costs herein taxed.

The Court finds there was reasonable grounds for this appeal.

IT IS ORDERED that a special mandate issue out of this Court directing the Cuyahoga County, Common Pleas Court to carry this judgment into execution.

EXHIBIT V.

Assignments of Error in the Ohio Supreme Court.

1. Is a litigant in a lawsuit denied due process of law under the 14th Amendment to the Constitution of the United States of America and Article I, Section 16 of the Constitution of the State of Ohio, when the trial court

permits the trial to be adjourned six (6) times over a six (6) month period?

2. Is a litigant deprived of due process of law and effective redress in Court when the trial court deprives a party thereto of an uninterrupted trial?

3. Does the trial court abuse its discretion in permitting a trial, while in process, to be continued six (6) times over a six (6) month period?

4. Does a litigant during trial, by failing to object to continuances to future dates, waive his right to an uninterrupted trial?

EXHIBIT VI.

Notice of Appeal to the Supreme Court of Ohio.

Appellant, Clinton D. Bradesku, hereby gives notice of his appeal to the Supreme Court of Ohio from the judgment and final order made and entered herein on the 4th day of October, 1968.

This appeal is taken to the Supreme Court on condition that a motion to certify is allowed by that Court.

A. ALBERT PERELMAN,
McCAFFERTY, PERELMAN & HOLTZ,
Counsel for Appellant.

Copy of the foregoing notice was by certified post the day of October 21, 1968, forwarded to plaintiff-appellee, 14307 Tabor Avenue, Maple Heights, Ohio.

A. ALBERT PERELMAN.

EXHIBIT VII.

Article I, Section 16, Constitution of Ohio, Entitled: "Redress in Courts."

"All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the State, in such courts and in such manner, as may be provided by law."